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Sipdis

Sipdis, p, t, e, eap, nea, isn, eur, eeb

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Subject: germany - state/treasury delegation discusses  
burma and iran <>

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Classified By: EMIN Robert A. Pollard for reasons 1.4 (b)  
and (d).

11. (S) SUMMARY. German officials in the MFA, Economics Ministry, and Finance Ministry, while initially skeptical about the effectiveness of EU and U.S. trade and financial <> on Burma, agreed to consider U.S. suggestions as to how the EU might more effectively target <>. On Iran, German interlocutors were unusually circumspect about the status of efforts to adopt further EU autonomous <>. Officials at the Economics Ministry expressed concern that targeted Iran-related <> are moving in the direction of a general trade embargo. While Economics Ministry officials insisted that ambiguities in <> could expose German banks and exporters to criminal penalties -- even in cases of negligence -- MFA and Finance Ministry officials pointed out that Government agencies operate telephone hotlines/help desks for exporters and banks and reported that negligence-based violations generally result in civil fines, which can be appealed in a court of law. END SUMMARY.

12. (U) Deputy Assistant Secretary of State for International Organization Affairs Brian Hook, Treasury Office of Foreign Assets Control (OFAC) Director Adam Szubin, and OFAC Associate Director John Smith visited <> March 27 to discuss Burma and Iran <> with officials from the German MFA, Economics Ministry, and Finance Ministry. In addition, the delegation participated in a roundtable session with representatives of German industry and banking associations.

Burma <>  
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13. (C) Hook and Szubin told interlocutors at the MFA, Economics Ministry, and Finance Ministry that the GAERC's April review of the EU's Common Position on Burma presented an opportunity to discuss ways to more effectively target EU <> on Burma. They reported that EU and U.S. targeted financial <> have had an impact on both the regime and its supporters and recounted specific examples to that effect. Szubin noted that UN Special Envoy Gambari, whose mission appears to be yielding diminishing returns, had

recommended that the EU and U.S. adopt additional targeted <>, which have had an impact on the regime and have not hurt the Burmese people.

14. (C) MFA Deputy Director General for International Economic Affairs Victor Elbling said Germany views <> as a tool that supplements diplomacy, but added that careful consideration must be given to application. The MFA assesses that Burma <> have had a mixed impact, but have not yet induced the desired behavior change. Elbling added that the MFA has received inquiries from the Bundestag, where parliamentarians are concerned that <> are hitting innocents too hard. Elbling said it is important to enlist the support of Burma's major trading partners in the region.

15. (C) Wolfgang Piecha, MFA Director for South East Asia, said that Foreign Minister Steinmeier, during his recent visit to Singapore, Indonesia, and Vietnam, had heard from his counterparts that the only country with any influence over the Burmese regime is China. Steinmeier left the region with the impression that autonomous <> had been largely counterproductive, had helped to forge solidarity within the military, had increased China's influence, and had given the regime excuses for legitimizing its rule. Piecha said Germany supported UNSYG Ban's proposal for a UN-ASEAN summit and said Germany does not believe Gambari's mission has run its course, although he acknowledged that it was not currently yielding results. Piecha said Germany had doubts about the effectiveness of EU <>, which have already been in place for 12 years. He added that Germany is reluctant to support expansion of the EU's <> lists, noting that restrictions on trade in gems and timber only went into effect in late 2007/early 2008. He reiterated that the Bundestag does not want to see ordinary people hurt by <>.

16. (C) In a separate meeting, Economics Ministry Director for <> 00000424 002.2 of 004

Foreign Trade Law Ursina Krumpholz supported the idea of waiting to see the effects of the 2007 changes to EU <> before discussing new steps. She said Germany also wants to wait for the results of the May referendum. Krumpholz also expressed skepticism about the effectiveness of EU and U.S. restrictions on the import of Burmese gems and timber, noting that the EU and U.S. are not Burma's major trading partners. Like Elbling, she suggested that the EU and the U.S. must do more to engage China and other major Burmese trading partners in the region.

17. (C) Szubin said the U.S. shares Germany's assessment that <> are not a "silver bullet," but a tool to facilitate diplomacy. Szubin's interlocutors reacted with surprise when he stated that the delegation was visiting not to suggest another round of new measures, but to offer suggestions on how the EU might target its <> more effectively. Szubin recommended implementing an asset blocking requirement on entities listed in Annex 7 of the EU Common Position. He also suggested considering lifting investment restrictions on the 1,207 companies listed in Annex 5. While this Annex is aimed at facilitating the trade ban, the investment restrictions have led banks to screen against this list, resulting in a high number of false positives and prompting financial institutions to either let all transactions through or block the transactions of a large number of innocents. Instead, he suggested using Annex 5 as a guide for importers. Szubin noted that limited identifier information was the reason U.S. designations on Burma included only 40 names. He said the U.S. was willing to work with the EU to fill in gaps in identifier information. Finally, Szubin recommended that the EU consider listing the two major regime-owned companies-- the Myanmar Gems Enterprise and the Myanmar Timber Enterprise -- which are the main collectors of gem and timber revenue, for asset blocking.

18. (C) Elbling and Krumpholz said Germany would consider the

U.S. suggestions, but again stressed the need to engage China and other key players in South East Asia. Krumpholz noted that it is difficult to get German companies to accept <> -- not just in Burma, but in other countries, such as Iran -- particularly autonomous <>. Hook stated that the U.S. also prefers a multilateral approach, but stressed that further action on Burma in the UN Security Council would be difficult. Szubin agreed, stressing the need to consider other options in the absence of the preferred UN option. He added that the impact of EU-US financial <> could be very significant, given the centrality of the dollar, euro, and pound in international trade, and that these effects should not be underestimated.

¶9. (C) Finance Ministry Deputy Director General for International Financial Policy Berthold Leber noted that the Finance Ministry plays a limited role on the issue, given that there are "virtually no" payment transfers between Burma and Germany. Michael Findeisen, Finance Ministry Director for Terrorism Finance and Financial Crimes, agreed that incomplete identifier information on UN and EU lists (terrorism, Iran, Burma, etc.) was an obstacle to effective implementation of financial <>. He argued that informal financial transfer arrangements, such as hawala, also posed difficulties. Szubin noted that the Burmese regime needs access to major international financial centers, both to finance sales of natural gas and to facilitate transfers to companies' international operations. Findeisen welcomed the delegation's suggestions on how to target EU <> more effectively and said the Finance Ministry would lobby the MFA in this regard. Findeisen said the Finance Ministry was open to a further exchange of information, as well as a cooperative endeavor to fill gaps in identifier information.

Iran <>

¶10. (S) On Iran, Elbling and Krumpholz each noted that the EU had completed implementation of the financial measures in UNSCR 1803, but declined to give details about the state of discussions in Brussels on EU post-1803 autonomous measures. (COMMENT: Elbling and Krumpholz were considerably more

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circumspect than working-level colleagues in both ministries, who have expressed frustration on other occasions with the pace of Slovenia's efforts, as Council President, to move discussions on Iran forward. END COMMENT). Elbling stated that Germany and other EU member states are paying close attention to the case before the European Court of Justice (ECJ) on due process safeguards for individuals under <>. He said there are concerns in Brussels that the ECJ will even take a critical view on implementation of UNSCR ¶1803. Krumpholz expressed similar concerns.

¶11. (S) Hook, noting that the case before the ECJ concerns individuals, not entities, suggested the case was inapplicable to measures on financial institutions. "Germany takes the legal aspect seriously," Elbling said. "The EU has to be more stringent than the UN." On Banks Melli and Saderat, Krumpholz stated that the Economics Ministry had not yet seen "proof of conscious support of Iran's proliferation activities." In response to a question, Krumpholz said the Economics Ministry had not been "comfortable" with the evidence on Bank Sepah, either.

¶12. (S) Krumpholz said the Economics Ministry remains concerned about perceptions that UN and EU <> are leaving the area of nonproliferation and moving toward general trade <>. She noted this sentiment was shared by German businesses, which are also concerned that ambiguities in trade and financial measures and gaps in identifier information could expose banks and exporters to legal jeopardy. She explained that even negligence-based violation of sanctions could expose company compliance

officers-- who are personally liable under German law -- t  
criminal penalties, including prison sentences f up to six  
months. Krumpholz argued that German law does not provide  
for civil penalties in such cases.

¶13. (S) In this regard, the assessment of MFA and Finance  
Ministry officials on <> enforcement differed  
considerably. MFA International Economic Policy officer  
Claudia Schuett reported that the the German Federal Office  
of Economics and Export Controls (BAFA) and the Bundesbank,  
which is responsible for financial <> enforcement in  
Germany, operate a telephone hotline/help desk for <>  
and export control-related inquiries. The Finance Ministry's  
Findeisen reported that German banks that violate <>  
generally do so as the result of sloppiness, recklessness, or  
negligence. In such cases, he said, the Bundesbank generally  
levies a civil fine, which is subject to appeal in a court of  
law. (NOTE: Trade <> violations are generally  
investigated by state and federal prosecutors under Germany's  
Foreign Trade and Payments Act and/or War Weapons Control  
Act. END NOTE.) Findeisen agreed, however, that  
<>-related violations are more easily avoided with  
correct and complete identifier data.

#### Industry roundtable on iran -----

¶14. (C) In an industry roundtable discussion, Hook and Szubin  
outlined the rationale behind U.S. <> policy on Iran,  
as a means to facilitate international diplomatic efforts.  
They stressed the U.S. preference for multilateral approaches  
but the need for autonomous measures when multilateral  
efforts fall short. They also emphasized that <> are  
having an impact on influential constituencies in Iran. A  
representative of the German Federation of Industry (BDI)  
said business accepts that Iran's nuclear program is a  
threat, but argued that only multilateral <> can be  
effective. Otherwise, compliant firms in "responsible  
countries" lose out while other countries simply pick up  
market share. A German Chamber of Commerce (DIHK) official  
disputed that <> are ratcheting up <> enough to  
induce the regime to change its strategic position and cited  
the Majles election results.

¶15. (C) A representative of the German Association of Banks  
pointed out that German exporters waited for months for EU  
clarification on implementation of UNSCR 1737 paragraph 15, a  
situation that put its member banks in the "embarrassing  
position" of having to decide whether to pay exporters and

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"eat the risk" in the interim. He added that German banks  
are responsible to pay customers of the German branches of  
Iranian banks who lack sufficient liquidity, as they are all  
part of the same deposit insurance scheme.

¶16. (U) DAS Hook and Mr. Szubin have cleared this message.  
Timken jr